

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
GUARDIANSHIP PETITION NO.30 OF 2007**

Amol Ashok Raina .. Petitioner

Mrs.Amarjit Kaur for Petitioner
Petitioner present

**CORAM :SMT ROSHAN DALVI, J
DATE: 7th March, 2007**

P.C.

1. The petitioner has applied to be a guardian of his father. His father is stated to be ill. The petitioner has produced the documentary medical evidence showing the illness as well as hospitalisation of his father. The medical evidence produced does not show that his father suffers from a mental disorder. The only certificate annexed to the petition is of [Dr.Abhay A.Raut](#) dated 21st November, 2006 showing that at the time of filing of the petition, the petitioner's father suffered from tuberculoma of the brain.

2. It is the case of the petitioner that he desires to be appointed his guardian to execute the sale deed

in favour of his father and to obtain the purchase price. The petitioner has produced a copy of the agreement for sale entered into by his father with one H.N Laborn under which the consideration price to be paid by his father is Rs.6,50,000/- . Part consideration of the earnest of Rs.91,000/- has been received. The balance consideration is payable to the petitioner's father.

3. This petition is filed under Order 32A Rule 2C [C.P.C.](#) Ms.Kaur contended that the petition is maintainable in this Court as it is a suit or proceeding relating to guardianship of the person or custody of any minor or other member of the family under disability. This contention is misconceived. [C.P.C.](#) Is only a procedural code. It is not a substantive legislation. A suit or a proceeding filed under any of the substantive laws in any civil court will be governed by Order 32A CPC if it relates to a family dispute. Order 32 A shows the procedure to be followed by all

civil courts in case of suits or proceedings having a family dispute. The procedural code cannot confer jurisdiction upon a court. The Guardianship petition is required to be filed for minor wards under Guardian and Wards Act of and of persons with any mental disability under the Mental Health Act. In this case, the petition cannot be filed under the Mental Health Act as the petitioner's father is not shown to be a person suffering from any mental disorder. In fact, Ms.Kaur upon taking instructions from the petitioner who is present in Court, states that his father has understanding ability, but is physically unable to sign and hence this petition is filed. Such petition is not maintainable.

4. Hence, the Petition is rejected.

(Smt **R.S.Dalvi**, J)

